IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

WP(C).No. 35969 of 2007(F)

PETITIONER:

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1. V.P.DILEEP, S/O.KUTTINARAYANAN,
   VALIYAPARAMBIL HOUSE, P.O.CHERUKATTUPULAM,
   VANIYAMKULAM, OTTAPALAM, PALAKKAD DISTRICT.

2. M.RAJAN, S/O.NARAYANAN,
   MANGALASSERY HOUSE, P.O.PANNIYAMKURUSSI,
   CHERPULASSERY, PALAKKAD DISTRICT.

3. C.K.MOHANDAS, S/O.RAVUNNI,
   CHEERAKKAL HOUSE, P.O.KARALAMANNA,
   CHERPULASSERY.

BY ADV. SRI.K.RAMAKUMAR (SR.)
SRI.T.RAMPRASAD UNNI
SMT.SARITHA DAVID CHUNGATH
SRI.A.SAMEER
SRI.R.JAYACHANDRAN

RESPONDENTS:

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1. THE STATE OF KERALA REPRESENTED BY
   SECRETARY TO GOVERNMENT, EXCISE DEPARTMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE EXCISE COMMISSIONER,
   THIRUVANANTHAPURAM.

3. THE ASSISTANT EXCISE COMMISSIONER,
   PALAKKAD.

4. THE EXCISE INSPECTOR, CHERPULASSERY
   RANGE, PALAKKAD DISTRICT.

BY GOVERNMENT PLEADER SRI.ANU SIVARAMAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN, J.

W.P.(C).No.35969 of 2007

Dated this the 5th day of December, 2007

JUDGMENT

Heard the learned Government Pleader. Ext.P5, the impugned order, is issued by the Excise Commissioner suspending the licence of the persons enumerated therein and also calling upon them to show cause against cancellation of licence. Petitioners moved this court earlier on the ground that their shops were closed down without giving them an opportunity of being heard. While issuing the interim order in that case, this court noticed in Ext.P4 that the competent authority may have the power to suspend the licence. Obviously, while that statement in Ext.P4 was the wisdom behind that interim order, since what was under challenge in that case was the closure of the shop without following the rules. It is unfortunate that, in issuing Ext.P5, that observation in Ext. P4 interim order has been read as a direction. It does not appear to be so. One cannot also forget the salutary principle that the exercise of a statutory power cannot be on the basis of directions

from any other authority as to how a particular statutory power has to be exercised, except in exceptional situations. The purity and independence of the exercise of that statutory power would be clouded if one is to act on an assumed dictation. I say this in the context of my clear view for Ext. P4 interim order of this court did not contain any direction to the statutory authorities to suspend the licence of the petitioners.

2. Ext.P5 would show that the diazepam, a psychotropic substance was detected on 1.7.2007 in the toddy sold in shop No.40/2007-08 in the group in question. That shop was then closed. The chemical examination resulted in identifying the presence of the psychotropic substance.

3. The time lag between 1.7.2007 and the date of issuance of Ext.P5 namely 27.11.2007 may appear to advise that the impugned order suspending the licence without any pre-decisional notice is in proper. It may or may not be a case for cancellation of licence. This is for the Excise Commissioner to decide. It may or may not be a case where cancellation of the

licence in relation to the entire group is called for. This is also a matter for Excise Commissioner to decide independently without leaning on Ext. P4 interlocutory order of this Court.

4. In the aforesaid circumstances, the second respondent is directed to take up any objection that the petitioners may file to Ext.P5, hear them thereon, if they are in person or by any representative, and take a final decision within a period of ten days from the date of receipt of a copy of this judgment and reply to Ext. P5 whichever is later. Until then Ext.P5 order of suspension will stand confined to toddy shop No 40/2007-08.

The writ petition is disposed of in the above terms.

THOTTATHIL B.RADHAKRISHNAN,
JUDGE

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